

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

SETH D. HARRIS, Acting Secretary of Labor,
Successor to Hilda L. Solis, United States
Department of Labor,

Plaintiff

v.

ROBERT B. CHAMBLISS, individually
and as fiduciary of the **ROBERT B. CHAMBLISS**,
M.D. PROFIT SHARING PLAN,
ROBERT B. CHAMBLISS, M.D. PLLC.
and the **ROBERT B. CHAMBLISS, M.D. PROFIT**
SHARING PLAN,

Defendants

Case No. 3:13-cv-00455-H

Judge John G. Heyburn II

CONSENT ORDER AND JUDGMENT

Plaintiff, Seth D. Harris, Acting Secretary of Labor, successor to Hilda L. Solis, United States Department of Labor, pursuant to the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, et seq., filed a complaint against defendants Robert B. Chambliss, M.D., individually and as fiduciary of the Robert B. Chambliss, M.D. Profit Sharing Plan, Robert B. Chambliss M.D. PLLC ("the Company") and the Robert B. Chambliss, M.D. Profit Sharing Plan alleging breaches of their fiduciary responsibilities under ERISA §§404(a)(1)(A) through (D), 406(a)(1)(D), 406(b)(1) and 406(b)(2), with respect to the Robert B. Chambliss, M.D. Profit Sharing Plan ("Plan").

Defendants, Robert B. Chambliss, M.D., the Company, and the Plan, represented by counsel, have waived service of process of the complaint and have admitted to the jurisdiction of this Court over them and the subject matter of this action.

The plaintiff and defendants have agreed to resolve all matters in controversy in this action between them (except for the imposition by Plaintiff of any penalty pursuant to ERISA §502(l), 29 U.S.C. §1132(l), and any proceedings related thereto) and said parties do now consent to entry of a Consent Order and Judgment by this Court in accordance therewith.

Upon consideration of the record herein, and as agreed to by the parties, the Court finds that it has jurisdiction to enter this Consent Order and Judgment.

IT IS THEREFORE ORDERED that:

1. Defendants Robert B. Chambliss, M.D ("Defendant Chambliss") and the Company are permanently enjoined and restrained from violating the provisions of Title I of ERISA, 29 U.S.C. §1001 *et seq.*

2. Defendants Chambliss and the Company are jointly and severally liable to make contributions to the Plan such that current and former participant balances of the Plan, excluding the participant balance of Defendant Chambliss, total \$362,345.56. Defendants Robert B. Chambliss, M.D. and the Company shall make payments to the Plan, in accordance with this Consent Order and Judgment, such that current and former participant balances of the Plan, excluding the participant balance of Defendant Chambliss, total \$362,345.56.

3. Defendant Robert B. Chambliss, M.D. shall cause the real estate owned by the Plan, described as the Miller Monarch Lot (located in Hardinsburg, Kentucky), the

Glenn Nash Lot (located in Hardinsburg, Kentucky), and 2145 East View Drive (a.k.a. Mountain Treehouse Cabin located in Sevierville, Tennessee), to be liquidated by sale to Defendant Chambliss. Defendant Chambliss shall finance this purchase with (1) a promissory note entered into with The Farmers Bank (located in Hardinsburg, Kentucky) and (2) if necessary, a distribution from his Plan account for the remainder of the purchase price. The collateral for the promissory note shall be the three properties being purchased in the real estate transactions. The Plan shall receive a minimum of \$129,533.90 in net proceeds from the real estate transactions described above, which shall be deposited into the Plan as of the date of closing ("the Closing") which shall take place not later than 21 days from the entry of this Consent Order and Judgment. Within 5 business days following the Closing, Defendant Chambliss shall provide proof of completion of the real estate transactions, including real estate settlement statements, to the Cincinnati Regional Director, Employee Benefits Security Administration ("Cincinnati Regional Director") at U.S. Department of Labor, EBSA, Cincinnati Regional Office, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011-2664. In the event that the proceeds from the sale of the real estate owned by the Plan is different than the amount stated above in this paragraph 3, Defendant Chambliss shall provide documentation to the Cincinnati Regional Director which reconciles the variance.

4. Defendant Chambliss represents that, before signing this Consent Order and Judgment, he deposited \$158,949.94 into the Plan after the sale of 2134 Walnut Ct., a.k.a. Mountain Perch Cabin (located in Sevierville, Tennessee). \$142,000 of this \$158,949.94 was used to pay down a line of credit to Leitchfield Bank, leaving \$16,949.94 net in plan assets. \$15,911.36 of this \$16,949.94 was distributed to four Plan

participants, other than Defendant Chambliss. Further, Defendant Chambliss represents that, before signing the Consent Order and Judgment, he deposited \$39,000.00 into the Plan after the sale of his personal cattle, and he deposited \$16,295.99 in net proceeds, received from a loan against an insurance contract (John Hancock Life Insurance Company policy number ****7855) owned by Defendant Chambliss, into the Plan.

5. Defendant Chambliss hereby waives all his rights to all money he is owed from the Plan, including lost opportunity costs, and waives all of his interest in any property and/or money he may hold in the Plan, including lost opportunity costs.

6. In reliance on the representations made by Defendant Chambliss and the Company in the documents provided by them to the Secretary (including a financial declaration and tax returns), which show that they are currently unable to immediately restore current and former participant account balances to \$362,345.56, the Secretary agrees to forbear immediate collection of the entire restitution amount and agrees that Defendants Chambliss and the Company shall complete actions ordered in paragraph 3 and 4 above and pay the remaining restitution amount in accordance with the schedule set forth below:

a. Beginning May 15, 2013, Defendant Chambliss shall begin making monthly payments to the Plan totaling \$182,100.00 in the following manner:

1) Beginning May 15, 2013 through May 14, 2015, Defendant Chambliss shall pay \$4,587.50 every month to the Plan.

2) Beginning May 15, 2015 through May 14, 2018, Defendant Chambliss shall pay \$2,000 every month to the Plan.

b. Defendant Chambliss shall provide the Cincinnati Regional Director with satisfactory proof of the payments monthly. Nothing herein shall prevent Defendants Chambliss or the Company from making payments to the Plan on an accelerated basis. If Defendant Chambliss prepays the entire balance, the balance will be reduced by 5 %. In the event Defendant Chambliss prepays the entire balance reduced by 5%, he shall have complied with and completed restoration under this paragraph.

c. To secure the payment plan referenced in this paragraph 6 ("the Payment Plan"), the Plan shall be named as a beneficiary of the John Hancock insurance policy number ****7855 held by Defendant Chambliss. Specifically, to the extent this policy is maintained, the Plan shall be named the primary beneficiary of the proceeds of this policy and the Plan shall receive proceeds from this insurance policy in an amount equal to the outstanding balance of the Payment Plan. Within 30 days of entry of this Consent Order and Judgment, Defendant Chambliss shall provide the Cincinnati Regional Director and the independent fiduciary, referred to in paragraph 12 below, with a copy of the John Hancock insurance policy number ****7855 naming the Plan as primary beneficiary.

7. If it is found that the documents Defendants Robert B. Chambliss, M.D. and the Company provided regarding their financial status are untrue, the sum remaining to restore current and former participant account balances, excluding Defendant Chambliss, to \$362,345.56 shall immediately become due and payable by them together with post-judgment interest pursuant to 28 U.S.C. §1961.

8. Should Defendant Chambliss fail to pay any of the installment payments or prepayment described in paragraph 6 above on or before the dates set forth therein, the

entire amount of the balance remaining plus post-judgment interest shall become due and payable immediately with no further notice or demand required by Plaintiff to Defendants.

9. Defendant Chambliss agrees that he shall notify the Cincinnati Regional Director within seven (7) days of any change of his name, residence, telephone number, mailing address or employment until the amounts recited in this Consent Order and Judgment are repaid.

10. In the event that Defendant Chambliss dies prior to the completion of the payments to the Plan identified in paragraphs 3 and 4 above or the installment payments described in paragraph 6, the remaining balance of the restitution ordered by this Consent Order and Judgment shall be due and payable immediately. Nothing shall prevent the independent fiduciary of the Plan, named in paragraph 12 below, from asserting a claim on and against the estate of Defendant Chambliss for the remaining balance of restitution to the Plan that Defendant Chambliss is ordered by this Consent Order and Judgment to pay. Defendant Chambliss shall not alter his latest will (dated January 14, 2009 and provided to the Secretary) or use any estate planning mechanisms in order to avoid payment of the remaining amount owed to the Plan.

11. In the event Defendant Chambliss files for bankruptcy protection in the future, any amount of unpaid liability set forth in paragraph 2 above, which resulted from his breaches of fiduciary duties as alleged in the Secretary's complaint, is, and shall be treated as, a non-dischargeable debt under §523(a)(4) of the Bankruptcy Code, 11 U.S.C. §523(a)(4).

12. Upon the entry of this Consent Order and Judgment, Defendants Chambliss and the Company shall be removed as fiduciaries of the Plan and AMI Benefit Plan Administrators, Inc. ("AMI") shall be appointed as the independent fiduciary to administer the Plan. Defendants Chambliss and the Company shall be permanently enjoined from serving or acting as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA.

13. All sums referred to in paragraphs 5 above shall be forfeited for reallocation among the individual account balances (other than Defendant Chambliss) of the Plan. Within a reasonable time, the Plan's independent fiduciary shall reallocate these sums and all other assets held by the Plan to the accounts of the participants of the Plan (other than Defendant Chambliss) in an amount equal to the participants' pro rata share based on total employee and employer contributions.

14. The independent fiduciary shall serve as the Plan's trustee and administrator. The independent fiduciary shall have the following powers, duties, and responsibilities:

a. The independent fiduciary shall have responsibility and authority for administering the Plan in accordance with the Plan's governing documents, the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001 et. seq., and the Internal Revenue Code;

b. The independent fiduciary's responsibilities with respect to the administration of the Plan shall include, but not be limited to, managing the Plan's assets, communicating with participants of the Plan, calculating the participant and beneficiaries account balances, maintaining records and filing appropriate papers with the Internal

Revenue Service and the Department of Labor;

c. The independent fiduciary shall have responsibility and authority to collect, liquidate, and manage such assets of the Plan for the benefit of the eligible participants and beneficiaries in accordance with this Consent Order and Judgment, the Plan's governing documents, the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code;

d. The independent fiduciary shall have responsibility to reallocate Defendant Chambliss' account balance as described in paragraph 5 above, and to allocate pro rata the installment payments, described in paragraph 6 above, to active and former Plan participants in an amount equal to the participant contributions, participant loan repayments, employer contributions, and lost opportunity costs owed to each individual;

e. Defendants Chambliss, the Company and the Plan, their agents, representatives, servants and employees and all persons acting by or under their authority, shall cooperate with the independent fiduciary in the performance of his duties. Defendants Chambliss, the Company and the Plan shall provide their full cooperation to the independent fiduciary relative to any need for participant or financial data that may exist with regard to any record of the Plan. The independent fiduciary shall have full access to all data, information and calculations in the Plan's possession or under its control, including information contained in the records of the Plan service providers;

g. The independent fiduciary may reasonably terminate any current service providers to the Plan and retain qualified replacement service providers including, but not limited to, accountants and attorneys, as may be reasonably necessary to perform his duties hereunder;

h. The independent fiduciary shall obtain bonding in an amount that meets the requirements of ERISA §412, 29 U.S.C. §1112. The costs incurred by the independent fiduciary in obtaining such bonding shall be paid according to terms of the Plan's governing documents;

i. The independent fiduciary's reasonable and necessary fees for the performance of the above enumerated duties together with administrative expenses and costs reasonably and necessarily incurred shall be paid from the Plan's assets and reimbursed immediately by Defendants Chambliss and the Company;

j. The independent fiduciary shall not be responsible for bringing any action on behalf of the Plan against any prior fiduciaries or service providers of the Plan for violations of state or federal law that occurred prior to the date of the independent fiduciary's appointment. The independent fiduciary shall be responsible for pursuing any failures to comply with this Consent Order and Judgment and for pursuing any violations of ERISA that occur after its appointment as the independent fiduciary by this Court; and

k. The independent fiduciary may not be held responsible or liable for any claim against the Plan or related entities that existed, arose, matured or vested prior to his appointment as independent fiduciary for the Plan.

l. The independent fiduciary shall protect the Plan's assets and administer the Plan as stated in the February 1, 2013 proposal attached to and a part of this Consent Order and Judgment.

m. The independent fiduciary shall make an initial distribution to Plan participants and beneficiaries the last quarter of 2013 with annual distributions thereafter.

15. Each party agrees to bear his, her or its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of this proceeding to date including, but not limited to, attorneys' fees which may be available under the Equal Access to Justice Act, as amended.

16. This Consent Order and Judgment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

17. The Court shall maintain jurisdiction over this matter only for purposes of enforcing this Consent Order and Judgment.

18. Nothing in this Order is binding on any government agency other than the Employee Benefits Security Administration, United States Department of Labor.


Dated: May 6, 2013


John G. Heyburn II, Judge
United States District Court

JUDGE JOHN G. HEYBURN II
UNITED STATES DISTRICT COURT JUDGE

The parties hereby apply for and consent to the entry of this Consent Judgment and Order.


FOR PLAINTIFF, SECRETARY OF LABOR,


MAUREEN M. CAFFERKEY
Senior Trial Attorney for Plaintiff
SETH D. HARRIS, Acting Secretary of Labor
U.S. Department of Labor

Dated 5/2/13

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Individually and as fiduciary of the
the Robert B. Chambliss M.D. Profit
Sharing Plan, and as president of
Robert B. Chambliss, M.D. PLLC

Dated: 5-2-13

MARK STIEBEL
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Dated: May 2, 2013

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Dated: 5/2/13